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**VIA HAND DELIVERY**

Donna R. Searcy, Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Room 222  
Washington, D.C. 20554

Re: **Reply Comments by the New Jersey Cable Television  
Association, Inc., Docket RM - 8221**

Dear Ms. Searcy:

Attached for filing in Docket No. RM-8221 are an original and four copies of the Reply Comments of the New Jersey Cable Television Association, Inc.

If you have any questions, please contact the undersigned.

Respectfully submitted,

  
John D. Seiver

**Attachments**

cc: Kathleen Levitz  
Gregory Vogt  
Peggy Reitzel  
ITS

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JUN - 7 1993

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARYBEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.

In the Matter of

Amendments of Parts 32, 36, 61,  
64, and 69 of the Commission's Rules  
to Establish and Implement Regulatory  
Procedures for Video Dialtone Service)  
)  
)  
)  
)  
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RM - 8221

REPLY COMMENTS

The New Jersey Cable Television Association, Inc. ("NJCTA") hereby submits reply comments in support of the Joint Petition for Rulemaking and Request for Establishment of a Joint Board ("Joint Petition") and in response to the comments of various local exchange carriers ("LECs") and related organizations opposing the Joint Petition.

I. None Of The Commenters Opposing The  
Joint Petition Adequately Explain  
How Current Procedures Allow For  
Proper Cost Allocation With  
Video Dialtone Deployment

The Joint Petition correctly identified existing problems with the Commission's procedures for video dialtone cost allocation and separations. The Joint Petition also exposed the abuse of the existing cost allocation standards in different applications for video dialtone deployment, demonstrating substantial cross-subsidies and assigning almost all network costs to the intrastate jurisdiction. NJCTA also submitted its own

evidence of LEC cost misallocations demonstrating the inadequacy of existing Commission rules (much of which was relied upon in the Joint Petition). Indeed, NJCTA's own expert reviewing one application for video dialtone made clear that cross-subsidization "remains alive and well."<sup>1/</sup> Nonetheless, the LECs have generally argued that cost allocation and cross-subsidy issues need not be addressed now because the LECs only have monopoly power in the switched voice and data services and have no market power for video services. The LECs further posit that, as the new challenger entering the video services field, they would not have the incentive or ability to misallocate costs.<sup>2/</sup> This is nonsense.

Under a "closed" industry environment when the telco did not enter competitive markets and competitors did not enter telco markets, a misallocation of costs among telco services, while by no means unimportant, was far less significant than in an "open" industry structure. In the "closed" model, at the very worst, a misallocation might result in some inequities in the rate structure and in inefficiencies in the use of telco services. In the end, however, the aggregate of all regulated

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<sup>1/</sup> Affidavit of Leland L. Johnson, Ph.D., dated February 12, 1993 at 23, submitted as Exhibit E to the reply of the New Jersey Cable Television Association, filed February 17, 1993 (Docket W-P-C-6840); see also Joint Petition at 9, n.21.

<sup>2/</sup> E.g., U.S. West Comments at 5.

telecommunications services were priced on average at just and reasonable levels. In an "open" industry, a misallocation can result in a direct cross-subsidization of competitive services by excessive prices for monopoly services.

Where a telco operates in both monopoly and competitive markets, both categories of services are produced using common plant and by a common corporate organization. As a result, there is a significant probability -- indeed likelihood -- that telcos would use their captive, monopoly service base to cross-subsidize the production and marketing of its competitive services. In a "closed" industry, the telco had far less to gain from a misallocation of costs than in a mixed regulated/unregulated market structure. Therefore, the need for effective cost allocation procedures is not obviated by the limited competition that is present in certain telco market segments; the need for such regulation is actually heightened, and the Commission necessarily must commit additional resources to this effort and complete the rulemaking proceeding as requested in the Joint Petition.<sup>3/</sup>

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<sup>3/</sup> Relying on the RBOCs to police themselves would be foolish; unless there are sufficient safeguards and oversight, anticompetitive abuses will persist. See, e.g., United States v. Western Elec., 767 F. Supp. 308, 317-22 (D.D.C. 1991) (Detailing the Commission's inability to monitor and regulate properly the activities of the RBOCs), aff'd (D.C. Cir. May 28, 1993); Report on BellSouth Corporation and Affiliates, SEARUC Southern Task Force (1990) (detailing cost manual, affiliate transaction and other abuses: "the FCC's independent attestation audit program does not provide

[Footnote Continued Next Page]

## II. Certain LECs Originally Agreed That A Comprehensive Review Of Part 36 Was Necessary

Those opposing the Joint Petition generally argue that the cable industry is simply trying to forestall competition<sup>4/</sup> or that the Commission has already rejected the request for a separate rulemaking in the Video Dialtone Order itself.<sup>5/</sup> In the video dialtone proceeding, however, LEC comments were quite different; even BellSouth recognized the problems with the current cost allocation rules:

[Footnote Continued]

adequate assurance to regulators regarding the operating telephone companies' compliance with the Joint Cost Order Principles") at Ex. 14; U.S. General Accounting Office: Telecommunications: FCC's Oversight Efforts To Control Cross-Subsidization (February 19773) at 12 (Through on-site audits, FCC auditors have identified cost misallocations that neither CPA audits nor FCC's reviews of CPAS' workpapers and audit reports had disclosed. For example, FCC auditors have found cases of misallocations totaling over \$300 million in which carriers charged expenses to the regulated side of their businesses and carriers' affiliates had overcharged regulated carriers for services and supplies).

4/ Ameritech Comments at 2-3, 5; GTE Comments at 8; NYNEX Comments at 5-6; PACBELL Comments at 2; USTA Comments at 4-5; U.S. West Comments at 2.

5/. ~~Monitagh over affords that the Commission's order approving~~

Some unresolved issues exist as to how to measure costs associated with various video dialtone services and then how to jurisdictionally separate broadband facilities that not only carry a multitude of new video, data and voice services, but also a cross section of traditional telecommunication services.6/

Moreover, BellSouth argued that the FCC should commence a pro-

to proceed full speed ahead with no standards on cost allocations or pricing and the ability to interpret the Joint Cost Order as each sees fit. Ad hoc treatment in separate 214 proceedings would allow each LEC to advance its own interpretation and save other cost issues for the tariff process.<sup>9/</sup> However, the tariff process is unsuited to resolving these more complicated issues and orders of the Commission accepting a tariff filing are not subject to judicial review.<sup>10/</sup> Accordingly, aggrieved parties would have to commence a complaint proceeding under Section 208 of the Communications Act which, as the Aeronautical Radio court recognized, would force "protestants to institute a cumbersome complaint procedure to address the merits of the tariff revision."<sup>11/</sup>

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<sup>9/</sup> Bell Atlantic Comments, at 6-7.

<sup>10/</sup> Aeronautical Radio, Inc. v. FCC, 642 F.2d 1221 (D.C. Cir. 1980) (decisions of the bureau relating to the acceptance of a tariff filing held to be "non-final" orders and not subject to judicial review).

<sup>11/</sup> Id. at 1235-36.

## Conclusion

There is simply no way the Commission can prevent anticompetitive conduct without specific cost allocation rules designed for video dialtone: "U.S. West agrees with Joint Petitioners in their claim that current cost allocation rules are not suited for [Video Dialtone] and must ultimately be changed."<sup>12/</sup> The Commission should commence a proceeding now to conform its rules to the realities of video services, refer the separation issues to a Joint Board and strengthen the tariff review process. These issues must be uniformly handled in a comprehensive proceeding before any video dialtone deployment takes place.

Respectfully submitted,

**NEW JERSEY CABLE TELEVISION  
ASSOCIATION**

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June 7, 1993

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<sup>12/</sup> U.S. West Comments at 9.